## UNITED STATES DISTRICT COURT MIDDLE DISTRICT OF PENNSYLVANIA

ALBEE PARKER,

Movant

-VS-

NO. 3:CV-05-1327 [Crim. No. 02-218]

(Judge Kosik)

UNITED STATES OF AMERICA,

Respondent

## **ORDER**

AND NOW, this 8<sup>TH</sup> day of July, 2005, IT APPEARING TO THE COURT THAT:

- (1) Movant, Albee Parker, filed the above-captioned motion to vacate, set aside or correct sentence pursuant to 28 U.S.C. §2255 on July 1, 2005;
- (2) On May 3, 2004, movant filed a previous motion to vacate, set aside or correct sentence pursuant to 28 U.S.C. §2255 (CV-04-0965; CR 02-0218);
- (3) Movant's previous motion to vacate was denied by the court on November 18, 2004:

## IT FURTHER APPEARING THAT:

- (4) Pursuant to the Antiterrorism and Effective Death Penalty Act of 1996, 28 U.S.C. §2255, §2244(b)(3)(A), before a district court can entertain a movant's second §2255 motion, it must receive an Order from the Court of Appeals authorizing it to consider the motion;
- (5) There is no indication in the record that movant sought authorization from the Court of Appeals for the Third Circuit prior to filing the second motion;
- (6) Moreover, the United States Court of Appeals for the Third Circuit has held that *Blakely v. Washington*, 542 U.S. 296, 124 S.Ct. 2531 (2004) and *United States v. Booker*, 543 U.S. , 125 S.Ct. 738 (2005), the sole bases for movant's second §2255 motion,

do not apply retroactively to cases on collateral review. *Lloyd v. United States*, 407 F.3d 608 (3d Cir. 2005).

## ACCORDINGLY, IT IS HEREBY ORDERED THAT:

- (1) The movant's second motion to vacate, set aside or correct sentence pursuant to 28 U.S.C. §2255 is dismissed;
  - (2) The Clerk of Court is directed to close this case; and,
- (3) Based on the court's conclusions herein, there is no basis for the issuance of a certificate of appealability.

s/Edwin M. Kosik
United States District Judge